HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT APPEAL NO: 1010 of 2005

Between:

Sredharala Joga Rao and others.

..... APPELLANTS

AND

Anakapalle Municipality, Rep. by its Commissioner,
Anakapalle, Vishakapatnam District.

.....RESPONDENT

::JUDGMENT::

Counsel for the Appellants :MR.V.VENKATARAMANA

Counsel for the Respondent : MR.S.NAGESWARA REDDY

26th December, 2005

Per G.S. Singhvi, CJ

This appeal is directed against order dated 12.5.2005 passed by the learned Single Judge in Writ Petition No. 11221 of 2005, whereby he refused to quash the notices issued by the Commissioner of Anakapalle Municipality under Sections 171 to 179 of the A.P. Municipalities Act, 1965 (for short 'the Act') for utilisation of the parcels of land belonging to the appellants for widening of the road.

A perusal of the record shows that in the notices dated 5.5.2005 issued by the Commissioner it was mentioned that the appellants had given undertaking to handover a particular portion of their properties free of cost to the Municipality for the purpose of formation of Master Plan Road. They had done so in order to facilitate the grant of building permission. It is not in dispute that on the basis of the undertakings given by them, the authority concerned had issued building permissions in favour of the petitioners and, thereafter, they constructed the buildings.

The appellants questioned the notices issued by the Commissioner by asserting that the municipal authorities were utilising their land without acquiring the same in accordance with law.

The learned Single Judge referred to the undertakings given by the petitioners and gift deeds executed by them and disposed of the writ petition by directing the municipal authorities to furnish copies of the undertakings to the petitioners (appellants herein) with liberty to them to pursue their remedies before the Civil Court.

On the last date of hearing i.e. on 19.12.2005, learned counsel for the appellants made a request for adjournment to enable his clients to file additional affidavit along with the permission granted by the Municipality for constructing building. Thereafter, appellant No.1 filed his affidavit along with a photostat copy of the sanctioned plan.

Learned counsel for the Municipality has produced Xerox copy of the agreement signed by Sri Koyalada Sankara Rao (Appellant No.10) who gave an undertaking to the Municipality to handover 35.76 Sq. Mtrs., of land for the purpose of widening of road. According to the learned counsel, other appellants had entered into similar agreements for handing over possession of specified land to the

Municipality for being utilised for road widening programme. Learned counsel says that only that portion of the land of the appellants will be utilised for road widening programme in respect of which they had given undertaking at the time of grant of building permissions.

Learned counsel for the appellants complains that municipal authorities are seeking to deprive his clients of land in excess of what was specified in the undertaking given at the time of grant of building permission.

In the context of the aforementioned statement of the learned counsel for the appellants, we enquired from learned counsel for the Municipality whether excess land is sought to be used for the purpose of road widening. In reply, Shri S. Nageswara Reddy gave out that if excess land is to be utilised for such purpose, then the same will be acquired in accordance with the procedure established by law.

In view of the statement made by the learned counsel for the respondent, we do not find any valid ground or justification to interfere with the order under challenge and dispose of the appeal with the direction that the respondent-Municipality shall be free to take possession and utilise the land for road widening purpose in accordance with the undertakings given by the appellants. However, if excess land is to be utilised for such programme, then the same will have to be acquired by the competent authority in accordance with law.

G.S. SINGHVI, CJ

Date: 26th December, 2005

R. SUBHASH REDDY,J

Pnb / svs/ vtv